

## **CHAPTER 8 BUSINESS REGULATIONS<sup>1</sup>**

### **ARTICLE 8-1 BUSINESS LICENSE**

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#### **Section 8-1-1 License Required**

- A. It is unlawful for any person, whether as principal or agent, either personally or for another person, or for any corporation, or as a member of any firm or partnership, to commence, practice, transact or carry on any trade, calling, profession, occupation or business within the city limits without first having procured a license from the city to do so and without complying with all regulations of such trade, calling, profession, occupation or business as specified or required by the United States Government or the State of Arizona and its political subdivisions. No license shall be issued without proof by the applicant of such compliance and verification by the clerk that no violation of the city's zoning or sales tax regulations will occur by such issuance.
- B. The practicing or carrying on of any trade, calling, profession, occupation or business by any person, corporation or partnership without first having procured a license from the city to do so, or without complying with any and all regulations of such trade, calling, profession, occupation or business, as required by other law or by this article shall constitute a separate violation of this article for each and every day that such trade, calling, profession, occupation or business is practiced, carried on or conducted within the city.
- C. Upon submission of valid proof the following individuals or groups may obtain from the city clerk a written exemption from the provisions of this chapter.
  - 1. Non-profit educational institutions, fraternal and service clubs, bona fide religious organizations, and agencies of any federal, state or local governments.
  - 2. Non-profit private clubs where a basic membership fee covers the cost of the use of facilities.
  - 3. Fund raising projects of non-profit and bona fide religious organizations, not conducted on a regular basis.
  - 4. Special event permits issued at the discretion of the council upon application by the organizers sponsoring the event.

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5. Business and trades that are exempt from licensing and tax regulations under federal and state statute.

### **Section 8-1-2 Application and Issuance**

- A. It shall be the duty of the clerk upon receipt of a properly completed application for a business license and verification of the data contained thereon, to prepare and issue a license under this article for every person, corporation or partnership required to pay a license fee hereunder and to state in each license the amount charged for the same, the period of time covered thereby, the name of the person, corporation or partnership for whom issued and the trade, calling, profession, occupation or business licensed and the location or place of business where the trade, calling, profession, occupation or business is to be carried on, transacted or practiced.
- B. In no case, shall any mistake made by the clerk in issuing any license or collecting the amount of fee for any license or the amount actually due from any person required to pay for a license as provided herein, prevent, prejudice or stop the city from collecting the correct amount of fee or charge for any license or the amount actually due from any person required to pay for a license as provided herein, or revoking any license erroneously issued and refunding the fee collected.
- C. No greater or lesser amount of money shall be charged or received by the clerk for any license than is provided for in this article, and no license shall be issued for any period of time other than as provided herein.
- D. All charges for a license required by this article shall be paid in advance and in lawful money of the United States of America at the office of the clerk.
- E. It shall be a condition precedent to licensing that all ordinances and regulations affecting the public peace, healthy and safety be complied with in full.

### **Section 8-1-3 Term and Fee of Licenses**

- A. The annual fee for any license, including a renewal license, under this article shall be Fifty Dollars (\$50.00), with each such license to expire as set forth in paragraph C of this section. New licenses issued during the course of a calendar year shall be prorated based upon the month of issue as follows:

January	\$ 50.00
February	\$ 45.83
March	\$ 41.67
April	\$ 37.50
May	\$ 33.34
June	\$ 29.17
July-December	\$ 25.00

- B. In addition to the Fifty Dollar (\$50.00) fee, every person, firm, corporation or other entity applying for a spirituous liquor license, under the provisions of Arizona Revised Statute

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Sections 4-101 et seq., whether it be for an original license or transfer of license, shall tender to the city a fee of One Hundred Dollars (\$100.00), unless the application is for a special event liquor license, then the fee shall be Fifty Dollars (\$50.00). Said fee shall be tendered to the city contemporaneous with the filing of an application for original license or transfer of license to the Arizona State Department of Liquor Licenses and Control. The fee shall not be applicable to wholesalers licensed under Arizona Revised Statute Section 4-209.

- C. Any license issued pursuant to this article shall expire and a renewal charge for all licenses provided herein shall become due and payable on January 1<sup>st</sup> of each year and every January 1<sup>st</sup> thereafter. Any new license charge shall become due and payable and be paid on or before the day of commencing to carry on, transact, or practice the trade, calling, profession, occupation or business for which a license is required by this article.
- D. Any person, firm, company or corporation who discontinues the business, trade, calling, profession or occupation during the period covered by the current license shall not be entitled to any refund of license fee for that portion of the period remaining after discontinuing the business, trade, calling, profession or occupation.
- E. When the charge for any license required hereunder shall remain unpaid for fifteen (15) days from and after the due date, such charge shall be delinquent and the city clerk, on the day upon which said charge becomes delinquent, shall add thereto an amount equal to five dollars (\$5.00) as a penalty and no receipt or license shall be issued thereafter by the city clerk until the charge and penalty shall be paid in full.

### **Section 8-1-4      Number of Licenses**

- A. A separate charge for a license shall be paid for each branch establishment or separate place of business in which any person, corporation or partnership shall carry on, transact or practice a trade, calling, profession, occupation or business.
- B. When more than one trade, calling, profession, occupation or business is carried on, transacted or practiced by the same person, corporation or partnership at one fixed place of business, only one license shall be required and the charge for such license shall be the charge applicable to any of the activities, and all activities shall be listed on the license issued.
- C. When more than one trade, calling, profession, occupation or business shall be carried on, transacted or practiced by the same person, corporation or partnership without any fixed place of business, a separate license shall be required and a separate appropriate charge be paid for each activity for which a license is required by this article.

### **Section 8-1-5      License to be Exhibited**

- A. Each person, corporation or partnership having a license and having a fixed place of business shall keep said license, while in force, at some conspicuous place or location within the place of business.
- B. Each person, corporation or partnership having a license and having no fixed place of business shall carry such license with them at all times, while engaged in any activity for

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which the license was issued, except that a person acting for any such corporation, firm or company and not being the only person acting for such corporation, firm or company may carry with them a copy of the license which has been issued by the clerk and plainly marked or stamped "Duplicate".

- C. Each person, corporation or partnership having a license shall produce and exhibit the same whenever requested to do so by any designated officer of the city or by the clerk.

### **Section 8-1-6 Inspector of Licenses**

- A. The clerk shall be the inspector of licenses and may appoint, with approval of the city manager, such assistant inspectors as may be required to enforce these regulations.
- B. Each assistant inspector of licenses, immediately upon the facts coming to their knowledge, shall report to the clerk the name of any person, corporation or partnership carrying on, transacting or practicing any trade, calling, profession or business within the city without first having obtained a license as required by this article.

### **Section 8-1-7 Duties and Powers of Inspectors**

The inspector of licenses and the assistant inspectors, each in the discharge and performance of their duties, shall have and exercise the following powers:

1. To file a complaint for any violation of the provisions of this chapter with the city magistrate.
2. To enter, free of charge and at any reasonable time, any place of business for which a license is required by this article and to demand exhibition of the license for the current period of time from any person, corporation or partnership engaged in carrying on, transacting or practicing any trade, calling, profession, occupation or business at such place of business and, if such person, corporation or partnership shall fail then and there to exhibit such license, such person, corporation or partnership shall be liable to the penalties provided for violation of this article.

### **Section 8-1-8 Transfer of License**

No license issued under the provisions of this article shall be assigned or transferred to any other person, corporation or partnership without first obtaining permission from the city.

### **Section 8-1-9 Prorating Prohibited**

Except as set forth in section 8-1-3, no license fee herein provided shall be prorated.

### **Section 8-1-10 Denial; Restrictions; Suspension; Revocation**

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Licenses issued under the provisions of this chapter may be denied, restricted, suspended or revoked by the city clerk, after notice and an opportunity for a hearing, for any of the following causes:

1. Fraud, misrepresentation or material false statement contained in the application for license.
  2. Fraud, misrepresentation or material false statement made in the course of carrying on the business.
  3. Any violation of this chapter.
  4. Conducting business in violation of any city ordinance, county ordinance, state or federal law relating to the public health, safety and welfare.
  5. If deemed necessary in the interest of public safety, protection, health or morals.
- B. Upon notification of a violation, the business licensee shall have thirty (30) days in which to remedy the violation before the license is suspended. Business activity shall be allowed to continue during this period, unless the violation threatens public health, protection, safety, or morals, in which case the business activity shall cease immediately upon notification of violation.
- C. If after thirty (30) days the violation has not been remedied or the remedial action not brought to the attention of the license inspector or city clerk, the license inspector shall give written notice to the licensee or the person in control of the business within the city by personal service or registered mail that the license is suspended pending a hearing before the city manager, or his or her appointee, for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be within fifteen (15) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation.
- D. The licensee may take the necessary actions during the suspension period to remedy the violation(s), if allowable, and apply to the city clerk to have the license fully restored. The suspension notice shall be void, and the suspended license shall be promptly reinstated as soon as the licensee in violation receives notice in writing from the city clerk indicating the violation has been cured, removed or rectified.
- E. During the period of the license suspension, or revocation but awaiting appeal, no business activity shall be conducted at, on, or in such premises or by any such person, principal, agent, corporation, group, or member of any firm or partnership.

### **Section 8-1-11 Appeals**

- A. Any person aggrieved by the denial of an application for license or by the restrictions placed upon the license or by the suspension or revocation of such license, and who is not satisfied with the decision of the city manager or his or her designee, shall have the right to an appeal before the city council. An appeal shall be taken by filing with the city clerk, within fifteen (15) days after the decision of the city manager or his or her designee, a written statement setting forth fully the grounds for the appeal. If an appeal is not requested within such time limit, no

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appeal shall be granted, and the decision of the city manager or his or her designee will become final and binding. Such written statement of appeal must be delivered in person to the city clerk.

- B. The city council shall hear the matter of the appeal at the next regularly scheduled meeting that provides sufficient notice to the licensee, and notice of such hearing shall be mailed to the appellant at least seven (7) days prior to the meeting. Notice shall be deemed delivered upon mailing, whether received or not.
- C. The decision and order of the city council on appeal shall be final.

**ARTICLE 8-2      PEDDLERS,      CANVASSERS,      SOLICITORS      AND TRANSIENT**  
**MERCHANTS**

8-2-1	License Required; Prohibited activities
8-2-2	Definitions
8-2-3	Exemptions from Article
8-2-4	Conducting business without license prohibited
8-2-5	Application for License
8-2-6	Investigation of Applicant for License; Issuance and Contents of License
8-2-7	Solicitation by Charitable, Religious, Patriotic or Philanthropic Organizations
8-2-8	Term and Fees of Licenses
8-2-9	Posting of License; Issuance of Identification Cards
8-2-10	Creation of Undue Noise Prohibited
8-2-11	Enforcement of Article; Record of Licenses Issued and Violations Reported
8-2-12	Denial; restriction; suspension; revocation
8-2-13	Appeal
8-2-14	Peddling, Etc., on Posted Premises or Refusal to Leave Premises Upon Request Prohibited

### **Section 8-2-1 License Required; Prohibited Activities**

- A. Subject to the provisions of Arizona Revised Statute Section 3-563, it is unlawful for any peddler, solicitor, canvasser, transient merchant or itinerant vendor, as the same are defined in this chapter, to engage in such business within the corporate limits of the city without first obtaining a license therefor in compliance with the provisions of this chapter.
- B. When more than one trade, calling, profession, occupation or business shall be carried on, transacted or practiced by the same person, corporation or partnership without any fixed place of business, a separate license shall be required and a separate appropriate charge be paid for each activity for which a license is required by this article.
- C. It is unlawful for :
  1. Any peddler, solicitor or transient merchant to make exclusive use of any location on any street, alley, sidewalk or right-of-way for the purpose of selling, delivering, or exhibiting goods or merchandise.

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2. Any peddler, solicitor, or transient merchant to operate in a congested area where such operation may impede or inconvenience the public use of such street, alley, sidewalk, or right-of-way. For the purpose of this article, the judgment of a police officer, exercised in good faith, is conclusive as to whether the area is congested and the public impeded or inconvenienced.
3. Any person to exhibit or display any copy or facsimile of the original license issued under this article.
4. Any child or children under the age of sixteen (16) to solicit or peddle within the city pursuant to a permit granted under this article unless supervised by a responsible adult holding a permit issued pursuant to this article.
5. Any solicitor or peddler to commence earlier than 9:00 a.m. or extend later than 8:00 p.m. on any day.

### **Section 8-2-2 Definitions**

In this chapter, unless the context otherwise requires:

- A. "Canvasser or solicitor" means any person, corporate or individual, or firm, whether resident of the city or not, who travels, or whose agents travel, either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house, from street to street or business to business, taking or attempting to take orders for sale of goods, wares and merchandise, edible foodstuffs, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether collecting advance payments on such sales or not; provided that such definition shall include any person or firm who, for themselves or itself, or for another person or firm, hires, leases, uses or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.
- B. "Peddler" means any person, individual or corporate, or firm, whether a resident of the city or not, who travels, or whose agents travel, by foot, wagon, automobile or any other type of conveyance, from place to place, from house to house, from street to street or business to business, carrying, conveying or transporting goods, wares, merchandise, edible foodstuffs or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers or who, without traveling from place to place, shall sell or offer the same from a wagon, automotive vehicle, railroad car or other conveyance, and further provided, that persons or firms who solicit orders and as a separate transaction make delivery to purchasers as a part of the scheme of design to evade the provisions herein contained shall be deemed a peddler subject to the provisions herein contained. The word "peddler" shall include the words "hawker" and "huckster".
- C. "Transient merchant", "itinerant merchant" or "itinerant vendor" means any person, corporate or individual, or firm, whether owner or otherwise, whether a resident of the city or not, who engages, or whose agents engage, in a temporary business of selling and delivering goods, wares, merchandise, edible foodstuffs or provisions, within the city, and who in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, boat, public room in a hotel, lodging house, apartment, shop, or any street, alley, parking lot or other place within the city for the exhibition and sale of such goods,

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wares, merchandise and edible foodstuffs, either privately or at public auction. The person or firm so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of, or in the name of any such local dealer, trader, merchant or auctioneer.

### **Section 8-2-3 Exemptions from Article**

The terms of this article do not include the acts of persons conducting bona fide religious or charitable business, persons selling personal property at wholesale to dealers in such articles, news vendors, the acts of merchants or their employees in delivering goods in the regular course of business, nor to persons conducting periodic sales of personal property upon their living premises (i.e., yard or garage sales). Nothing contained in this article prohibits any sale required by statute or by order of any court, or prevents any person conducting a bona fide auction sale pursuant to law.

### **Section 8-2-4 Conducting business without license prohibited**

It is unlawful for any solicitor, peddler, or transient merchant to conduct or transact business without having registered with the city clerk and without having obtained a license therefore; without having such license in possession; or to fail to exhibit such license upon request by any official of the city or law enforcement agent. Each violation of this article shall constitute a separate violation for each and every day that such activity occurred within the city.

### **Section 8-2-5 Application for License**

- A. Applicants for a license under this article shall file with the city clerk a sworn application in writing, on a form to be furnished by the city clerk, which shall give the following information:
1. Name and description of the applicant; date of birth; social security number.
  2. Complete and permanent home and local addresses of the applicant and, in the case of a transient merchant, the local address from which proposed sales will be made.
  3. State sales tax number.
  4. A brief description of the nature of the business and the goods to be sold.
  5. If employed, the name and address of the employer (no post office box address will be accepted.)
  6. The length of time for which the right to do business is desired.
  7. If a vehicle is to be used, a description of the same, together with license number or other means of identification.
  8. A photograph of the applicant taken within sixty days immediately prior to the date of filing of the application, which picture shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.



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9. The names of at least two reliable property owners of the city who will certify as to the applicant's good character and business responsibility, or, in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant.
10. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor (except minor traffic violations) or violation of any municipal laws, the nature of the offense and the punishment or penalty assessed therefor.
11. Applicants proposing to sell edible foodstuffs shall file with the application a Pinal County health card.
12. The source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof, or services to be provided, where such goods, services or products are located at the time said application is filed, and the proposed method of delivery.
13. The most recent counties, cities or towns, if any, where applicant carried on business immediately preceding the date of application and the address from which such business was conducted in those municipalities.
14. Proof of applicable insurance that will be in effect during the license period.

### **Section 8-2-6 Investigation of Applicant for License; Issuance and Contents of License**

Upon receipt of such application, the clerk shall cause such investigation of such person's business responsibility or moral character to be made as is deemed necessary to the protection of the public good. No license shall be issued until ten working days have passed or completion of the required investigation. If, as a result of such investigation, the applicant's or their agents' or representatives' business responsibility and character are found to be unsatisfactory, the application shall be denied. If, as a result of the investigation, the character and business reputation appear to be satisfactory, the clerk shall issue a license. The clerk shall keep a full record of all licenses issued. Such license shall contain the number of the license, the date the same is issued, the nature of the business authorized to be carried on, the amount of the license fee paid, the expiration date of such license, the place where such business may be carried on under such license and the name of the person authorized to carry on the same.

### **Section 8-2-7 Solicitation By Charitable, Religious, Patriotic or Philanthropic Organizations**

- A. Any organization, society, association or corporation desiring to solicit or have solicited in its name money, donations of money or property or financial assistance of any kind or desiring to sell merchandise to persons other than members of such organization upon the streets, in office or business buildings, by house-to-house canvass or in public places for a charitable, patriotic or philanthropic purpose exclusively shall be exempt from the provisions of this article; provided, there is filed a sworn application in writing on a form to be furnished by the city clerk which shall give the following information:<sup>2</sup>

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1. Name and purpose of the cause for which the permit is sought.
  2. Names and addresses of the officers and directors of the organization.
  3. Period during which the solicitation is to be carried on.
  4. Whether or not any commission, fees, wages or emoluments are to be expended in connection with such solicitation and the amount thereof.
- B. Upon being satisfied that such organization, association or corporation is a charitable, patriotic or philanthropic organization, the clerk shall issue a permit without charge to such organization, association or corporation to solicit in the city. Such organization, association or corporation shall furnish all of its members, agents or representatives conducting solicitations identification cards stating the name of the organization, name of agent and purpose of solicitation which must be displayed upon demand.<sup>3</sup>
- C. Solicitations by religious organizations are expressly exempted from the requirements of obtaining a license for peddlers, canvassers, solicitors and transient merchants as set forth in this Article 8-2.<sup>4</sup>

### Section 8-2-8 Term and Fees of Licenses

- A. For a thirty (30) day license or a renewal thereof, every applicant peddler, solicitor, or transient merchant under this article shall pay Fifty Dollars (\$50.00) if the applicant is a non-resident and Twenty Five Dollars (\$25.00) if the applicant is a resident of the city for at least one (1) year prior to the application being filed. This fee shall be paid for each business endeavor conducted in the city.
- B. No greater or lesser amount of money shall be charged or received by the city clerk for any license provided for in this article, and no license shall be issued for any period of time other than as provided herein.
- C. All charges for a license required by this article shall be paid in advance and in lawful money of the United States of America at the office of the city clerk.
- D. A license issued pursuant to this article shall expire within thirty (30) days and a renewal charge for all licenses provided herein shall become due and payable on the 31<sup>st</sup> day after the issuance of the license and every thirty (30) days thereafter. Any new license charge shall become due and payable and be paid on or before the day of commencing to carry on, transact, or practice the trade, calling, profession, occupation or business for which a license is required by this article.
- E. Any person, firm, company or corporation who discontinues the activity during the period covered by the current license shall not be entitled to any refund of license fee for that portion of the period remaining after discontinuing the activity.
- F. Fees provided for this article shall become delinquent two (2) days after they become due and the city clerk, on the day upon which said charge becomes

<sup>3</sup>

AMENDED Section 8-2-7

Ordinance 04-07

Adopted 11/03/04

<sup>4</sup>

AMENDED Section 8-2-7

Ordinance 04-07

Adopted 11/03/04

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delinquent, shall add thereto an amount equal to ten dollars (\$10.00) as a penalty and no receipt or license shall be issued thereafter by the city clerk until the charge and penalty shall be paid in full.

### **Section 8-2-9 Posting of License; Issuance of Identification Cards**

The license issued to the peddlers, solicitors and transient merchants hereunder shall be posted in a conspicuous place if such licensees are using a vehicle or building. The clerk shall issue an identification card to each individual licensee having upon it the pertinent information contained in such license. Agents and representatives of corporate and firm applicants shall be issued similar identification cards. All such identification cards shall be displayed upon the person while engaged in business.

### **Section 8-2-10 Creation of Undue Noise Prohibited**

No licensee nor any person in their behalf shall unreasonably shout, blow a horn, ring a bell or use any sound device, including any loud-speaking radio or sound-amplifying system, upon any of the streets, alleys, parks or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the public thoroughfares for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

### **Section 8-2-11 Enforcement of Article; Record of Licenses Issued and Violations Reported**

It shall be the duty of the city law enforcement agent to enforce this article. The law enforcement agent shall report to the clerk all convictions for violation of this article, and the clerk shall maintain a record for each license issued and record the reports of violations therein.

### **Section 8-2-12 Denial; restriction; suspension; revocation**

- A. A license issued under the provisions of this article may be denied, restricted, suspended or revoked by the city clerk for any of the following causes:
1. Fraud, misrepresentation or material false statement contained in the application for license;
  2. Fraud, misrepresentation or material false statement made in the course of carrying on the business;
  3. Any violation of this article, city ordinance, state or federal law;
  4. Conviction of any felony or a misdemeanor involving moral turpitude;
  5. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public; or

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- 6. If deemed necessary in the interest of public safety and protection.
- B. In the event a license is revoked, the revocation shall be effective immediately and the applicant shall not conduct any business activity within the city.
- C. At the time of denial or revocation the city clerk shall give written notice to the person in control of the business, by personal service or registered mail, that the license has been denied or revoked. Such notice shall also advise that the licensee shall have fifteen (15) days to request a review hearing before the city manager or his or her appointee for the purpose of determining whether the license should have been denied or revoked.
- D. In the event the licensee requests a review hearing, the hearing shall be scheduled within fifteen (15) days of the request and the licensee shall receive notice of the date, time and place of the review hearing by personal service or registered mail.

### **Section 8-2-13 Appeal**

- A. Any person aggrieved by the denial of an application for a license or by the restrictions placed upon the license or by the suspension or revocation of such license who is not satisfied with the decision of the city manager or his or her designee shall have the right to an appeal before the city council. An appeal shall be taken by filing with the city clerk, within fifteen (15) days after the decision of the city manager or his or her appointee, a written statement requesting an appeal, and setting forth fully the grounds for the appeal. If an appeal is not requested within such time limit, no appeal shall be granted, and the decision of the city manager or his or her appointee will become final and binding. Such written statement of appeal must be delivered in person to the city clerk.
- B. The city council shall hear the matter of the appeal at the next regularly scheduled meeting that provides sufficient notice to the appellant, and notice of such hearing shall be mailed to the appellant at least seven (7) days prior to the meeting. Notice shall be deemed delivered upon mailing, whether received or not.
- C. The decision and order of the city council on appeal shall be final.

### **Section 8-2-14 Peddling, etc., on Posted Premises or Refusal to Leave Premises Upon Request Prohibited**

It is unlawful for any peddler, solicitor, canvasser or transient merchant, their agents or representatives, to come upon any premises whereon a sign bearing the words "no peddlers" or "no canvassers" or "no solicitors" or any combination of such terms or terms similar thereto is exposed to public view or to remain on any premises after having been requested to leave by the owner or occupant thereof whether such premises are posted as specified above or not.

### **Article 8-3 SWAP MEETS**

- 8-3-1 Definitions
- 8-3-2 License required
- 8-3-3 Exemptions

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### **Section 8-3-1 Definitions**

In this article, unless the context otherwise requires:

- A. "Swap meet operator" means any person, organization or firm who operates or conducts a swap meet.
- B. "Swap meet" means a place of commercial activity, popularly known as a swap meet, flea market, park-and-swap, which is:
  - 1. Open to the general public for the purchase of merchandise on the premises;
  - 2. Available to the general public who wish to sell merchandise on the premises, whether such sellers or vendors are in the business of vending or are making casual sales or some combination thereof;
  - 3. Composed of stalls, stands or spaces allotted to vendors who do not occupy the same allotted space or spaces on an uninterrupted continuous daily basis.

### **Section 8-3-2 License required**

It is unlawful for any swap meet operator or any vendor conducting or transacting business within the confines of a swap meet to engage in any swap meet business within the city without first complying with the licensing requirements of article 8-1 or 8-2, whichever is applicable.

### **Section 8-3-3 Exemptions**

- A. The terms of this article do not include acts of persons selling personal property within the confines of such person's residential premises, so long as such activity does not exceed three (3) consecutive days and is not performed more than four (4) times a year.
- B. Any vendor who conducts or transacts business at a swap meet and whose regular business activity subjects him or her to the licensing requirements set forth in article 8-1 shall have a business license for conducting regular business activity, but shall be exempt from the licensing requirements of this article.

## **ARTICLE 8-4 TRANSIENT LODGING, AUTOMOBILE RENTAL AND BEVERAGE TAX**

- 8-4-1 Definitions
- 8-4-2 Permit Requirements
- 8-4-3 Imposition of Tax - Tax Schedule
- 8-4-4 Administration and Procedures
- 8-4-5 Assessment and Appeal
- 8-4-6 Violations

### **Section 8-4-1 Definitions**

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In this article unless the context requires otherwise:

- A. "Auditor" means any City of Maricopa employee or agent authorized by the tax collector to audit records of a person subject to the tax specified by this article and may include an employee of another city or town.
- B. "Automobile Rental" means the total charge, exclusive of all federal, state and municipal taxes, made by any business that rents automobiles or trucks for use for any specified time period for less than six (6) months. Any equipment or machinery that may be rented for agricultural purposes shall be excluded from this definition.
- C. "Bar" means public or private bar, cocktail lounge, saloon, pool hall, tavern, inn, restaurant or similar establishment where beer, ale, malt liquor, vinous liquor or spirituous liquor is sold for consumption as a beverage on the premises. Malt liquor, vinous liquor and spirituous liquor shall not be deemed to include medicines unsuitable for beverage purposes.
- D. "Business" includes all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect.
- E. "Engaging", when used with reference to engaging or continuing in business, means the exercise of corporate, individual or personal franchise powers.
- F. "Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales.
- G. "Gross receipts" means the total amount of sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser, without any deduction therefrom on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense. The term does not include cash discounts allowed and taken or the sale price of property returned by customers, when the full sale price thereof is refunded either in cash or by credit.
- H. "Hotel" means any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house, apartment house, trailer or other lodging place with five or more sleeping rooms or units within the city offering lodging, wherein the owner and operator thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes or hospitals.
- I. "Lodging" and "lodging space" means the use or possession, or the right to the use or possession, of any room or apartment in a hotel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room, including storage or parking space for the property of a transient.
- J. "Notice" means a written instrument served by the city as follows, with time commencing from date of mailing, serving, filing or recording:

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1. By registered or certified mail to the last known address of the person to whom it is required to be given; or
  2. By personal service upon the person or his lawful representative; or
  3. By filing or recording with a clerk of the superior court or a county recorder.
- K. "Person" or "company", herein used interchangeably, means an individual, officer, agent, firm, partnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is clearly intended by the context.
- L. "Room rental" means the total charge, exclusive of all federal, state and municipal taxes, made by any hotel for lodging space furnished any transient. If the charge made by such hotel to such transient includes any charge for services or accommodations in addition to that of lodging, or the use of lodging space, then such portion of the total charge as represents only room or lodging space rental shall be distinctly set out and billed to such transient by such hotel as a separate item.
- M. "Tax collector" means the Council of the City of Maricopa or its authorized agent.
- N. "Taxpayer" means any person liable for any tax imposed by this article.
- O. "Transient" means any person who, either at his own expense or at the expense of another, obtains lodging or the use of any lodging space in any hotel or motel for which lodging or use of lodging space a charge is made.

### **Section 8-4-2 Permit Requirements**

- A. Every person having gross proceeds of sales or gross income upon which a transient lodging, automobile rental and beverage tax is imposed by this article desiring to engage in or to continue in business activities within the city, shall make application to the tax collector for a transient lodging, automobile rental and beverage tax permit, accompanied by a fee of five dollars (\$5.00). The five dollar (\$5.00) permit fee shall be pro-rata at the rate of one dollar twenty-five cents (\$1.25) for each one quarter or partial one quarter of the calendar year. No person shall engage in business or continue in business within the city until he shall have such a permit.
- B. The transient lodging, automobile rental and beverage permit required by subsection A of this section shall expire at the hour of 12:01 a.m. on the first day of January of each year. A fee of one dollar (\$1.00) shall be charged for each renewal permit.
- C. Application and renewal for transient lodging, automobile rental and beverage permits required under this article shall be made upon forms prescribed by the tax collector.
- D. It shall be a condition precedent to issuance of a permit that all provisions of this code, ordinances, regulations and requirements affecting the public peace, health and safety be complied with in total.
- E. Upon failure of any person to pay the required tax, penalty and interest within a period of thirty days after it becomes due, the tax collector may give such person notice of

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intent to cancel the transient lodging, automobile rental and beverage permit. If the person so notified requests a hearing within ten (10) days from notice, he shall be granted a hearing before the tax collector. Upon a finding by the tax collector that tax, penalty and interest is unpaid and has remained unpaid at least thirty (30) days after notification as herein provided, the transient lodging, automobile rental and beverage permit shall be cancelled, and such permit shall not be reissued until all taxes, penalty and interest due shall have been paid.

- F. Any person whose transient lodging, automobile rental and beverage permit has been cancelled shall be required to pay a fee of twenty-five dollars (\$25.00) for each reissue of a permit, and such permit shall not be reissued until all taxes, penalties and interest have been paid. The tax collector may, at its discretion, reissue under the previous permit number or issue a new permit.
- G. A person engaged in or conducting taxable business in two or more established locations within the city shall be required to obtain a separate permit for each location and notify the tax collector within ten (10) days after a sale, acquisition, rental or lease of any such real property, clearly identified by location in each instance.
- H. At the time a taxable business is sold, or when any other ownership change occurs, a new transient lodging, automobile rental and beverage permit shall be obtained for each permit effective at the time of such change.
- I. Any person holding a transient lodging, automobile rental and beverage permit shall be required to notify the tax collector of any change in either mailing address or location within fifteen (15) days after such change occurs. A fee of one dollar (\$1.00) shall be required whenever any change in location of a business occurs within the city.
- J. The permit prescribed in subsection A of this section shall be nontransferable and shall be displayed in some conspicuous part of the applicant's place of business.

### **Section 8-4-3 Imposition of Tax - Tax Schedule**

There is hereby levied and shall be collected by the tax collector, for the purpose of raising revenue to be used in defraying the necessary expenses for the acquisition, construction, maintenance and promotion of municipal, cultural or recreational facilities of the city or other services and activities deemed necessary by the council, transient lodging, automobile rental and beverage taxes measured by the amounts or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application of rates against values, gross proceeds of sales or gross income, as the case may be, as follows:

- A. At an amount equal to two percent (2%) of the gross receipts of sales from the transient lodging business upon every person engaged or continuing within the city in the hotel or motel business, as defined herein. Gross proceeds of sales or gross income, for the purpose of this subsection shall not include the leasing or renting of hotel or motel facilities to persons who reside in such units or facilities as their permanent or principal places of residence, provided that the units or facilities are occupied by the same persons for thirty (30) consecutive days or more. The first thirty (30) day period of any such lease or rental shall be subject to the tax imposed by this section. Room rentals



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paid by the United States Government, its departments or agencies are specifically excluded from this tax.

- B. At an amount equal to two percent (2%) of the gross receipts of sales or gross income from the business of every person engaged or continuing within the city in the business of automobile rental, as defined herein.
- C. At an amount equal to two percent (2%) of the gross receipts of sales or gross income derived from sales of beer, ale, malt liquor, vinous liquor or spirituous liquor, sold for consumption as a beverage on the premises, from the business of every person engaged or continuing within the city in the business of a bar, as defined herein.
- D. The tax imposed by this section shall be in addition to any other tax imposed by the city, and to all other licenses and taxes levied by law, whether as a condition precedent to engaging in any business taxable hereunder or for any other purpose.

### Section 8-4-4 Administration and Procedures

- A. Vested Administration and Payment of Taxes. The administration of this article is vested in and exercised by the City of Maricopa except as otherwise specifically provided, and all payments shall be made to the city. If payment is made in any other form than money which is legal tender in the State of Arizona and the United States of America, the tax obligation shall not be ended until the check, bank draft or money order has been honored by the person on whom drawn.
- B. Presumption that all Gross Receipts Are Taxable. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all gross receipts are subject to the tax until the contrary is established by the person seeking the exemption from said taxation.
- C. Tax Imposed Is Cumulative and Supplemental to Others. The tax imposed by this article shall be cumulative and supplemental to all other taxes levied by law.
- D. Records of Taxpayer. It shall be the duty of every person engaging or continuing in business activities within this city for which the transient lodging, automobile rental and beverage tax is imposed by this article to keep and preserve for a minimum of three (3) years, suitable records of the gross income, gross receipts of sales, invoices for goods and merchandise purchased and sold, resale certificates, job labor records and all other such books or accounts as shall be necessary to determine the amount of tax for which such person is liable under the provisions of this article. Collection of back transient lodging, automobile rental and beverage taxes by the city shall be limited to a period of three (3) years prior to the date when the tax collector began an audit of the taxpayer's books, wrote to the person through use of ordinary mail concerning an apparent violation of the article or took some other recorded action to require a transient lodging, automobile rental and beverage tax permit application or other compliance with the article.

All records mentioned in this subsection, shall be open for examination at any time by the tax collector.

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- E. Divulging of Information Forbidden. It is unlawful for any officer, employee or agent of the city to make known in any manner whatsoever the business affairs, operations or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of his official duty, or the amount or source of income, profits, leases, expenditures or any particular thereof, set forth or disclosed in any return or report, or the amount of tax paid. The council may, by motion, authorize an examination of the reports made pursuant to this article by the United States Director of Internal Revenue or the proper officials of the State of Arizona. Successors, receivers, trustees, executors, administrators and assignees, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties. Divulging of applicable information to any authorized employee or agent of an incorporated city or town shall be permitted when an employee or agent of another incorporated city or town is authorized by the tax collector to conduct audits for the city. Information supplied on transient lodging, automobile rental and beverage permit applications shall not be considered as confidential. Any officer, employee or agent of the city shall be authorized to divulge such confidential information as may be necessary upon the order of a court of competent jurisdiction.
- F. Inadequate Records. In the event the records of the gross income, gross receipts or gross proceeds of sales of the business, kept by the taxpayer, are deemed by the tax collector to be unsuitable, or the taxpayer does not keep such other books or records as may be necessary to determine the amount of the tax for which he is liable under the provisions of this article, the tax collector may prescribe the form and manner of keeping such books and records. In the event the taxpayer fails or refuses to follow such prescribed form, and the tax collector cannot ascertain from the records kept by the taxpayer the gross income, gross receipts or gross proceeds of sale of the business or the amount of the tax for which the taxpayer is liable under the provisions of this article, the tax collector may proceed as though such taxpayer failed or refused to make a return in the manner prescribed by this article.
- G. When Tax Payable. Except as otherwise specified in this article, the taxes levied under this article shall be due and payable on or before the fifteenth (15<sup>th</sup>) day of the month next succeeding the period in which the tax accrues and shall be delinquent five (5) days thereafter. The taxpayer shall, on or before the fifteenth (15<sup>th</sup>) day of the stated month, make out a return showing the gross amount, any authorized deductions, taxable amount and amount of the tax due for the preceding month. The taxpayer shall be required to use the report form authorized by the tax collector and shall mail or deliver the same, together with remittance for the amount of tax due, payable to the City of Maricopa, to the tax collector or any city employee authorized to receive such payment. The tax return shall be signed by the taxpayer or his authorized agent, and such signature shall be evidence that the person signing the return verified the accuracy of the information supplied in the return.
- H. Cash Receipts or Accrual Basis. The taxpayer may elect to file returns and pay his tax either on a cash receipts or accrual basis, but the taxpayer shall not change from one basis to the other, without the prior written approval of the tax collector. As a condition of granting such approval, the tax collector may require an audit of the taxpayer's records.

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- I. Separate Returns. Any person engaging in two or more forms of business shall file a separate report of gross income for each business location within the corporate limits of the city.
- J. Extension of Time for Making Returns. The tax collector may for good cause extend the date for making any return required under the provisions of this article, but the date for filing such return shall not be extended beyond the fifteenth (15<sup>th</sup>) day of the second month next succeeding the regular due date.
- K. Penalty for Delinquency. Any taxpayer who shall have failed to pay such tax within five (5) days from the date upon which such payment shall have become due shall be subject to and shall pay a penalty of ten percent (10%) of the amount of such tax, together with interest on such tax at the rate of one percent per month or fraction thereof until paid.
- L. Correction of Errors. If the taxpayer makes an error in computing the tax assessable against him, the tax collector shall correct such error and notify the taxpayer promptly by ordinary mail that such correction has been made. Any additional tax for which the taxpayer becomes liable shall be payable within ten (10) days after the letter or form showing the correction is mailed to the taxpayer. If the taxpayer makes an error which results in overpayment of tax, the tax collector shall allow credit against tax due on future returns or shall authorize a refund to the taxpayer.
- M. Duties of Person Quitting Business, His Successor or Assignee. Any person who sells his business or stock of goods or quits business shall be required to make the return provided for under this article within fifteen (15) days after the date he sold his business or stock of goods or quit business, and his successor in business or assignee shall be required to withhold a sufficient amount of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the tax collector showing that the taxes have been paid, or a certificate that no taxes are due.
  - 1. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided and the taxes shall be due and unpaid after the fifteen (15) day period herein provided, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.
  - 2. Transient lodging, automobile rental and beverage tax liability of the purchaser shall be limited to no more than that accrued during a period of one full year prior to date such business purchase becomes effective.
  - 3. It is unlawful for the purchaser to refuse or fail to pay the back taxes accrued during said period within thirty (30) days after the tax collector mails a letter or other notice by ordinary mail to the purchaser requesting such payment of back taxes.
- N. Tax as Lien. The tax imposed by this article, if not reported and paid by the due date specified by this article, shall constitute a lien on the property of any person subject to this article. The procedure to perfect such lien shall be as follows:

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1. The tax collector shall give written notice to the taxpayer at his last known mailing address by certified or registered mail, or such notice may be sent to the address at which the business is conducted. This written notice shall indicate that the city will file a lien on the subject property unless the taxpayer reports and pays all the tax past due including any penalties and interest due under this article or provides satisfactory evidence to the tax collector that no taxes are due, within a period of thirty (30) days from service or receipt of said written notice.
  2. If the taxpayer does not pay taxes due or provide evidence that no taxes are due within thirty (30) days after service or receipt of said written notice, the tax collector may prepare, in triplicate, copies of a "Notice and Claim of Lien" and file one copy with the county recorder of the county in which the property is located. The tax collector shall then send by certified or registered mail a copy to the taxpayer at his last known mailing address or at the address at which the business is conducted. The "Notice and Claim of Lien" shall contain the following:
    - a. Description of the property sufficient for identification.
    - b. The name of the taxpayer as owner or reputed owner of the property.
    - c. The amount of the delinquent tax, including penalties and interest; or if this amount cannot be determined precisely because suitable records and books were not made available by the taxpayer, the amount assessed, including penalties and interest, by the tax collector as authorized by this article when such books and records are not available or are unsuitable.
  3. From and after the date of its recording in the office of the county recorder, the lien shall attach to the property until paid. A sale of the property to satisfy the lien shall be made upon judgment of foreclosure or order of sale. The city shall have the right to bring an action to enforce the lien in the superior court of the county in which the property is located, at any time after its recording, but failure to enforce the lien by such action shall not affect its validity. The recorded "Notice and Claim of Lien" shall be prima facie evidence of the truth of all matters recited therein and the regularity of all proceedings prior to the recording thereof.
  4. A prior recording for the purposes provided in this section shall not be a bar to the subsequent recording of a lien for such purposes, and any number of such liens on the same property may be enforced in the same action.
- O. Tax Collector May Examine Books and Papers. The tax collector may examine any books, papers, records or other data bearing upon the correctness of any return or for the purpose of making a return where none has been made, as required by the provisions of this article. If any person shall fail to appear before the tax collector or to answer any material questions or to produce any books, records, papers or other data when requested to do so, such failure or refusal shall be reported to the city attorney, who shall thereupon institute proceedings in the superior court of the county where such taxpayer resides to obtain compliance.
- P. Taxpayer's Liability. The liability of the taxpayer for taxes due shall remain the same, whether he collects sufficient added payments from his customers to cover such taxes due.

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- Q. Tax Liabilities of Partners. All taxes assessed under the provisions of this article upon the business activities of a partnership shall be a liability and charges against each and all of the individual partners; but when paid by the partnership, such liability against each and all of the individual partners shall cease.

### Section 8-4-5 Assessment and Appeal

- A. Assessment Procedure. If any person who is required to file a return under the provisions of this article fails or refuses to make a return, the tax collector shall proceed, in such manner as he may deem best, to obtain facts and information on which to base the assessment of the tax herein prescribed; and to this end the tax collector may make examination of the books, records and papers of any such person; and may take the evidence on oath of any person whom he may believe to be in possession of facts or information pertinent to the subject of inquiry, which oath the tax collector may administer. If no other information is readily available, the tax collector may make a reasonable judgement on the basis of past reports by the taxpayer or by any predecessor. When the tax collector has reached a decision as to the assessment, he shall notify the taxpayer in writing of such assessment, which shall become final within thirty (30) days after such notice has been mailed or served, unless the taxpayer shall notify the tax collector in writing of a request for a tax hearing within said thirty (30) days.
- B. Hearing at Taxpayer's Request. When a taxpayer requests a hearing as indicated in subsection A of this section, such hearing shall normally be held in the offices of the City of Maricopa provided, that the tax collector may choose another suitable room in the same city or by mutual agreement with the taxpayer, he may hold the hearing in such other place as may prove desirable. The hearing shall be conducted by the tax collector, and it shall be closed to all except the tax collector and his authorized representatives and the taxpayer and his authorized representatives, unless the taxpayer agrees in writing to waive restrictions on release of confidential information. The tax collector shall provide the taxpayer with not less than ten (10) days notice of the date, time and place of the hearing. During the hearing the taxpayer or his authorized representative may present any evidence he deems appropriate to the issues or questions under consideration. Within fifteen (15) days after the conclusion of the hearing, the tax collector shall affirm, modify or vacate any decision made with respect to the issues or questions discussed in the course of the hearing. Notice of said decision shall be provided to the taxpayer by the tax collector as provided in this article, and said decision shall be effective in ten (10) days after service of notice.
- C. Payment Under Protest. If any person feels aggrieved by a tax assessment or believes that any or all of his activities are not subject to the transient lodging, automobile rental and beverage tax required by this article, he shall pay the amount of such assessment or tax claimed due before the delinquent date and shall at that time give notice in writing to the tax collector that all or part of such payment is made under protest, and shall in the notice give the grounds and reasons for such protest and that a certain part thereof or that the total sum is protested.
1. Within ten (10) days after receipt of such protest, the tax collector shall reply in writing to the last known mailing address of the taxpayer, stating whether the assessment or tax applied is to be changed as requested, and giving reasons for the decision.

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2. If the taxpayer is then dissatisfied, he may take appropriate action in the superior court to recover payments made under protest. Court action shall be taken within sixty (60) days after the tax collector has mailed his reply as required by paragraph 1 of this subsection. Failure to take court action within the required sixty (60) day period shall make the protest null and void.
3. If court action has been taken by the taxpayer under paragraph 2 of this subsection, all subsequent payments due shall be paid on or before the due date. However, if each tax form is plainly marked "Paid Under Protest", such subsequent payments shall be treated as part of the original protest until such time as court remedies have been exhausted or the court action withdrawn by the taxpayer.

### **D. Collection of Delinquent Taxes.**

1. If any tax imposed by this article, or any portion thereof, is not paid within thirty (30) days after the same becomes delinquent, the tax collector shall be empowered to commence court action in any appropriate court of competent jurisdiction to collect tax, penalties and interest due, and to utilize any and all appropriate remedies as authorized under the laws of the State of Arizona. Such actions may be commenced whether separate criminal charges have been filed to cover alleged failure to comply with this article.
2. Every tax imposed by this article and all increases, interest and penalties thereon shall become, from the time the same is due and payable, a personal debt from the person liable to the city and it shall be payable to and recoverable by the tax collector.

### **E. Adoption of Administrative Procedure.** The council is hereby authorized to adopt written administrative regulations to implement the enforcement of this article or to further define terms used in this article. Such administrative regulations shall be enforceable as though they were integral portions of the article itself.

## **Section 8-4-6 Violations**

- A. Advertisement Regarding Taxes. It is unlawful for any person engaged in any of the businesses classified in section 8-4-3 to advertise or hold out to the public in any manner, directly or indirectly, that the tax herein imposed is not considered as an element in the price to the consumer.
- B. Permit Required. It is unlawful for any person engaging in a business subject to the city's transient lodging, automobile rental and beverage tax to fail to obtain a permit before beginning or continuing such business.
- C. Tax Collection from Customers. Any person who collects added payments from customers, stated or indicated to be for the purpose of meeting transient lodging, automobile rental and beverage tax obligations of such person, shall be required to use such money only for such purpose. It is unlawful for any person to fail to pay transient lodging, automobile rental and beverage tax due to the city within a period of thirty (30) days after the date such tax is due if evidence is provided that such person has at any time collected such added payments from customers.

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- D. Failure to Make Return. It is unlawful for any person or for any officer or agent of any company or corporation to fail or refuse to make the returns and to pay tax provided to be made by the provisions of this article, or to make or permit to be made any false or fraudulent return or false statement in any return required by this article; or for any reason to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article, or for any person or officer or agent of a company to fail or refuse to permit the examination of any book, paper, account, record or other data by the tax collector as required by this article; or to violate any of the other provisions of this article.

### **ARTICLE 8-5**

### **SEXUALLY ORIENTED BUSINESSES**

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8-5-18	Prohibition Against Children in a Sexually Oriented Business
8-5-19	Hours of Operation
8-5-20	Exemptions
8-5-21	Penalty; Injunction

#### **Section 8-5-1 Purpose and Intent**

It is the purpose of this article to regulate adult-oriented businesses, to promote the public health, safety, and general welfare of the citizens of the city, and to avoid and mitigate the detrimental secondary affects of adult-oriented businesses through content neutral regulations. It is not the purpose of this article to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials, or to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. This article is not intended to interfere with or suppress legitimate expression or any speech activities protected by the First Amendment to the United States Constitution nor is it intended to permit any use or activity which is otherwise prohibited or made punishable by law.

#### **Section 8-5-2 Definitions**

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In this article, unless the context otherwise requires:

- A. "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- B. "Adult bookstore, adult novelty store or adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
  - 1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
  - 2. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

- C. "Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:
  - 1. Employees who appear in a state of nudity or semi-nude; or
  - 2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
  - 3. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- D. "Adult motel" means a hotel, motel or similar commercial establishment which:
  - 1. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or



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2. Offers a sleeping room for rent for a period of time that is less than ten hours; or
  3. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.
- E. "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are predominantly characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." "Adult motion picture theater" does not include a theater where all viewing occurs in a common area with seating for fifty (50) or more persons.
- F. "Adult theater" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- G. "Employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- H. "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- I. "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
- J. "Establish" or "Establishment" means and includes any of the following:
1. The opening or commencement of any sexually oriented business as a new business; or
  2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
  3. The additions of any sexually oriented business to any other existing sexually oriented business; or
  4. The relocation of any sexually oriented business.
- K. "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- L. "Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed,

## **BUSINESS REGULATIONS**

sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the State of Arizona or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:

1. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
  2. Where in order to participate in a class a student must enroll at least three days in advance of the class.
- M. "Nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
- N. "Person" means an individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.
- O. "Semi-nude" or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part.
- P. "Sexual encounter center" means a non-medical business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
1. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude; or
  2. The matching and/or exchanging of persons for "specified sexual activities".
- Q. "Sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.
- R. "Specified anatomical areas" means:
1. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
  2. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.
- S. "Specified criminal activity" means any of the following offenses:

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1. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries for which:
    - a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or
    - b. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
    - c. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period.
  2. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.
- T. "Specified sexual activities" means any of the following:
1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; or
  2. Sex acts, actual or simulated, including intercourse, oral copulation, masturbation or sodomy; or
  3. Excretory functions as part of or in connection with any of the activities set forth in paragraphs 1 and 2 above.
- U. "Substantial enlargement" of a sexually oriented business means the increase in floor area occupied by the business by more than twenty-five percent, as the floor area exists on the date this article takes effect.
- V. "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:
1. The sale, lease or sublease of the business; or
  2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
  3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

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Sexually oriented businesses are classified as follows:

1. adult arcades
2. adult bookstores, adult novelty stores or adult video stores
3. adult cabarets
4. adult motels
5. adult motion picture theaters
6. adult theaters
7. escort agencies
8. nude model studios
9. sexual encounter centers

### **Section 8-5-4 License Required**

- A. It is unlawful:
  1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the city pursuant to this article.
  2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the city pursuant to this article.
  3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this article.
- B. An application for a license must be made on a form provided by the city.
- C. All applicants must be qualified according to the provisions of this article. The application may request and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established in this article.
- D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.
- E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:
  1. If the applicant is:
    - a. An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen years of age;
    - b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

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- c. A corporation or limited liability company, the corporation or limited liability company shall state its complete name, the date of its incorporation, evidence that the corporation or limited liability company is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and stockholders or all members if the entity is a limited liability company, and the name of the registered statutory agent and the address of the registered office for service of process.
2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state the sexually oriented business' fictitious name and submit the required registration documents.
3. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this article, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
4. Whether the applicant, or a person residing with the applicant, has had a previous license under this article or other similar sexually oriented business ordinances from another municipality or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or stockholder of a corporation or a member of a limited liability company that is licensed under this article whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
5. Whether the applicant or a person residing with the applicant holds any other licenses under this article or other similar sexually oriented business ordinance from another municipality or county and, if so, the names and locations of such other licensed businesses.
6. The single classification of license for which the applicant is filing.
7. The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s), if any.
8. The applicant's mailing address and residential address.
9. A recent photograph of the applicant(s).
10. The applicant's driver's license number, Social Security number and/or his/her state or federally issued tax identification number.
11. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

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12. A current certificate and straight-line drawing prepared within thirty days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within fifteen hundred (1,500) feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within fifteen hundred (1,500) feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
  13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred-fifty square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in section 8-5-14.
- F. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the city the following information:
1. The applicant's name or any other name (including "stage" names) or aliases used by the individual.
  2. Age, date, and place of birth.
  3. Height, weight, hair and eye color.
  4. Present residence address and telephone number.
  5. Present business address and telephone number.
  6. Date, issuing state and number of driver's permit or other identification card information.
  7. Social Security number.
  8. Proof that the individual is at least eighteen years of age.
- G. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:
1. A color photograph of the applicant clearly showing the applicant's face and the applicant's fingerprints on a form provided by the Pinal County Sheriff's Office. Any fees for the photographs and fingerprints shall be paid by the applicant.
  2. A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, or state has ever had a license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the name, the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.

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3. A statement whether the applicant has been convicted of a specified criminal activity as defined in this article and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

### **Section 8-5-5 Issuance of License**

- A. Upon the filing of said application for a sexually oriented business employee license, the city clerk shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty days from the date the completed application is filed. After the investigation, the city clerk shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
  1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form; or
  2. The applicant is under the age of eighteen years; or
  3. The applicant has been convicted of a "specified criminal activity" as defined in this article; or
  4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this article; or
  5. The applicant has had a sexually oriented business employee license revoked by the city within two years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in section 8-5-10.
- B. A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any specified criminal activity as defined in this article or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in section 8-5-6.
- C. Within thirty days after receipt of a completed sexually oriented business application, the city clerk shall approve or deny the issuance of a license to an applicant. The city clerk shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
  1. An applicant is under eighteen years of age.
  2. An applicant or a person with whom applicant is residing is overdue in payment to the city of taxes, fees, fines or penalties assessed against or imposed upon him/her in relation to any business.

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3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
  4. An applicant or a person with whom the applicant is residing has been denied a license by the city to operate a sexually oriented business within the preceding twelve months or whose license to operate a sexually oriented business has been revoked within the preceding twelve months.
  5. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this article.
  6. The premises to be used for the sexually oriented business have not been approved by the Pinal County Health Department, Maricopa Fire Department or the building official as being in compliance with applicable laws and ordinances.
  7. The license fee required by this article has not been paid.
  8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.
- D. The license, if, granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to section 8-5-3. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.
- E. The Pinal County Health Department, Maricopa Fire Department and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty days of receipt of the application by the city.
- F. A sexually oriented business license shall issue for only one classification as found in section 8-5-3.

### **Section 8-5-6 Fees**

- A. Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a five hundred dollar (\$500.00) non-refundable application and investigation fee.
- B. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the city an annual non-refundable license fee of five hundred dollars within thirty days of license issuance or renewal.
- C. Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual one hundred dollar non-refundable application, investigation and license fee.
- D. All license applications and fees shall be submitted to the city clerk.



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### **Section 8-5-7 Inspection**

- A. An applicant or licensee shall permit representatives of the Pinal County Sheriff's Office, the Pinal County Health Department, Maricopa Fire Department, City Zoning Department, or other city departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- B. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.

### **Section 8-5-8 Expiration of License**

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 8-5-4. Application for renewal shall be made at least thirty days before the expiration date, and when made less than thirty days before the expiration date, the expiration of the license will not be affected.
- B. When the city clerk denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city clerk finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety days have elapsed since the date denial became final.

### **Section 8-5-9 Suspension**

The city clerk shall immediately suspend a license for a period not to exceed thirty (30) days if a licensee or an employee of a licensee has:

- A. Violated or is not in compliance with any section of this article;
- B. Refused to allow an inspection of the sexually oriented business premises as authorized by this article.

### **Section 8-5-10 Revocation**

- A. The city clerk shall revoke a license if a cause of suspension in section 8-5-9 occurs and the license has been suspended within the preceding twelve months.
- B. The city clerk shall revoke a license if:
  - 1. A licensee gave false or misleading information in the material submitted during the application process; or
  - 2. A licensee has knowingly allowed possession, use or sale of controlled substances on the premises; or
  - 3. A licensee has knowingly allowed prostitution on the premises; or

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4. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended; or
  5. Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licensed premises; or
  6. A licensee is delinquent in payment to the city, county or state for any taxes or fees past due.
- C. When the city clerk revokes a license, the revocation shall continue for one year, and the licensee shall not be issued any sexually oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the city clerk finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety days have elapsed since the date the revocation became effective.
- D. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

### **Section 8-5-11 Transfer of License**

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

### **Section 8-5-12 Location of Sexually Oriented Businesses**

- A. A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district not permitted in the City of Maricopa Zoning Code.
- B. A person commits a misdemeanor if the person operates or causes to be operated a sexually oriented business within fifteen hundred (1,500) feet of:
1. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities; or
  2. A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school; or
  3. A boundary of a residential district as defined in the City of Maricopa Zoning Code; or

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4. A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land within the city which is under the control, operation or management of the city park and recreation authorities; or
  5. The property line of a lot devoted to a residential use as defined in the City of Maricopa Zoning Code; or
  6. An entertainment business which is oriented primarily towards children or family entertainment; or
  7. A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.
- C. A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand feet of another sexually oriented business.
- D. A person commits a misdemeanor if that person causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.
- E. For the purpose of subsection B of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection B. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.
- F. For purposes of subsection C of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

### **Section 8-5-13 Additional Regulations for Adult Motels**

- A. Evidence that a sleeping room in a hotel, motel or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.
- B. A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or subrents the same sleeping room again.
- C. For purposes of subsection B of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

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### **Section 8-5-14 Additional Regulations for Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms**

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
1. An application for a sexually oriented business license shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The city clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  2. The application shall be sworn to be true and correct by the applicant.
  3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the city clerk.
  4. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
  5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
  6. It shall be the duty of the licensee to ensure that the view area specified in paragraph 5 of this subsection remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to paragraph 1 of this subsection.

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7. No viewing room may be occupied by more than one person at any time.
8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candles as measured at the floor level.
9. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
10. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight inches of the floor.

B. A person having a duty under subsection A of this section commits a misdemeanor if he knowingly fails to fulfill that duty.

### **Section 8-5-15 Additional Regulations for Escort Agencies**

- A. An escort agency shall not employ any person under the age of eighteen years.
- B. A person commits a misdemeanor if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen years.

### **Section 8-5-16 Additional Regulations for Nude Model Studios**

- A. A nude model studio shall not employ any person under the age of eighteen years.
- B. A person under the age of eighteen years commits a misdemeanor if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen years was in a restroom not open to public view or visible to any other person.
- C. A person commits a misdemeanor if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

### **Section 8-5-17 Additional Regulations Concerning Public Nudity**

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- A. It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
- B. It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least five (5) feet from any patron or customer and on a stage at least two feet from the floor.
- C. It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- D. It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

### **Section 8-5-18 Prohibition Against Children in a Sexually Oriented Business**

A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen years on the premises of a sexually oriented business.

### **Section 8-5-19 Hours of Operation**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock A.M. and eight o'clock A.M. on weekdays and Saturdays, and one o'clock A.M. and noon P.M. on Sundays.

### **Section 8-5-20 Exemptions**

It is a defense to prosecution under section 8-5-17 that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school licensed by the State of Arizona; a college, junior college or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or
- C. In a structure:
  - 1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - 2. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

### **Section 8-5-21 Penalty; Injunction**

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- A. Violation of any requirement or prohibition stated in this article is a class one (1) misdemeanor. With respect to a violation that is continuing in nature, each day that the violation occurs is a separate offense.
- B. In addition to other penalties, a sexually oriented business which operated without a valid license shall constitute a public nuisance, which, in addition to any other enforcement mechanisms in this Code, may be abated by a suit for injunctive relief.